

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Attorney's Office and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States"); Mobility Products Unlimited, LLC (hereinafter "MPU"); and John Ward, personally and as Chief Executive and Managing Partner of MPU (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. MPU is a durable medical equipment supplier of power wheelchairs and power operated vehicles (also know as "scooters") (collectively "Power Mobility Devices"), located in South Daytona, Florida. At all times relevant for this agreement, Bryan Dylewski and John Ward were owners of MPU.

B. The United States contends that MPU submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

C. The United States contends that it has certain civil claims, against MPU for engaging in the following conduct (hereinafter the "Covered Conduct") during the period from January 1, 1999 to and through May 13, 2005:

- (1) billing Medicare for the sale of new motorized wheelchairs which had previously been delivered to Medicare beneficiaries, returned to MPU and then redelivered to other Medicare beneficiaries;
- (2) offering unlawful inducements to Medicare beneficiaries by providing free or discounted manual or transport chairs contemporaneously with the purchase of a Power Mobility Devices;
- (3) billing Medicare for seatbelts and armrests when these accessories came standard from the manufacturer; and
- (4) business practices related to:
 - (a). billing Medicare beneficiaries at a rate higher than cash sales transactions to non-Medicare beneficiaries;
 - (b). contacting more than one physician in order to obtain a Certificate of Medical Necessity ("CMN") when the original physician contacted did not sign a CMN;
 - (c). adding diagnosis codes to the CMN;
 - (d). employing marketing techniques that create a demand for a power scooter, yet supplying a power wheelchair; and
 - (e). medical necessity.

D. The United States contends also that it has certain administrative claims, as specified in Paragraph 5 below, against MPU for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by MPU nor a concession by the United States that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. MPU and/or John Ward agree to pay to the United States \$2,775,000.00 (the "Settlement Amount"), with interest at the legal rate as prescribed by law¹, by electronic funds transfer pursuant to written instructions to be provided by the United States. MPU and/or John Ward agree to make four (4) quarterly payments with interest at the legal rate as prescribed by law until such Settlement Amount is paid in full. MPU and/or John Ward agree to pay \$750,000.00 with interest at the legal rate for its first quarterly payment within 10 (ten) days of the execution of this Settlement Agreement. MPU and/or John Ward further agree to make the remaining quarterly payments with interest at the legal rate in three equal installments.

2. Default. In the event that MPU fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, MPU shall be in Default of its payment obligations ("Default").

¹ This interest rate can be found at "www.FederalReserve.gov/releases/H15/current" under the category US government securities, treasury constant maturities, 1-year.

The United States will provide written notice of the Default, and MPU shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to John Ward, Chief Executive Officer and Managing Partner, Mobility Products Unlimited, LLC, 2400 South Ridgewood Avenue, Suite 48, South Daytona, Florida 32119, or to such other representative as MPU shall designate in advance in writing. If MPU fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). MPU shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to MPU by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. MPU agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. MPU shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

3. Exclusion. In the event of Default as defined in Paragraph 2, above, OIG-HHS may exclude MPU from participating in all federal health care programs until MPU pays the Settlement Amount and reasonable costs as set forth in Paragraph 2 above. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by MPU in any capacity while MPU is excluded. This payment prohibition applies to MPU, anyone who employs or contracts with MPU, any hospital or other provider where MPU provides services, and anyone else. The exclusion applies regardless of who submits the claims or other request for payment. MPU shall not submit or cause to be submitted to any federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by MPU during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. MPU further agrees to hold the federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. MPU waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in

any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion MPU wishes to apply for reinstatement, MPU must submit a written request for reinstatement in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. MPU will not be reinstated unless and until the OIG approves such request for reinstatement.

4. Subject to the exceptions in paragraph 7 below, in consideration of the obligations of MPU set forth in this Agreement, conditioned upon MPU or John Ward's full payment of the Settlement Amount, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release John Ward, Bryan Dylewski, and MPU, its predecessors, successors, parents, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of MPU set forth in this Agreement and the Corporate Integrity Agreement ("CIA"), conditioned upon MPU's full payment of the Settlement Amount, and subject to Paragraph 15, below, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining

any administrative action seeking exclusion from the Medicare, Medicaid, or other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against MPU or John Ward under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraphs 6 and 7, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude MPU from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

6. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Bryan Dylewski from Medicare, Medicaid, or other Federal health care programs (as defined by 42 U.S.C. §§ 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

7. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including MPU, John Ward, or Bryan Dylewski) are the following:

- (a). Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- (b). Any criminal liability;
- (c). Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (d). Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- (e). Any liability based upon such obligations as are created by this Agreement.

8. MPU waives and will not assert any defenses MPU may have to any criminal prosecution or administrative action relating to the Covered Conduct which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. MPU agrees that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. MPU fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which MPU has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and MPU shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims. MPU agrees to the following:

(a). Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MPU, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) The matters covered by this Agreement,
- (2) The United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) MPU's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) The negotiation and performance of this Agreement,
- (5) The payment MPU makes to the United States pursuant to this Agreement, and
- (6) The negotiation of, and obligations undertaken pursuant to the CIA to:
 - (i). Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
 - (ii). Prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 10 (a) (6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to MPU. (All costs described or set forth in this Paragraph 10 (a) are hereafter, "unallowable costs").

(b). Future Treatment of Unallowable Costs: If applicable, these unallowable costs shall be separately determined and accounted for by MPU, and MPU shall not charge such unallowable costs directly or indirectly to any contracts

with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by MPU or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c). Treatment of Unallowable Costs Previously Submitted for Payment:

MPU further agrees that, if applicable, within ninety (90) days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by MPU or any of its subsidiaries or affiliates, and, if applicable, shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. MPU agrees that, if applicable, the United States, at a minimum, shall be entitled to recoup from MPU any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

If applicable, any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by MPU or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on MPU or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

(d). Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine MPU's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

11. MPU agrees to cooperate fully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, MPU will encourage, and agrees not to impair, the cooperation of its directors, officers, and employees and use its best efforts to make available, and encourage the cooperation of former directors, officers and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Subject to the attorney-client privilege and attorney work-product doctrine, MPU agrees also to furnish to the United States complete and un-redacted copies of all documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct which it has

undertaken, or which has been performed by its counsel or other agent, and waives any other rights or privileges which otherwise apply to such production.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except as expressly identified in paragraph 13 of this Agreement.

13. MPU agrees that it waives and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals based upon the claims defined as Covered Conduct. MPU agrees that it will not seek payment from third party payors based upon the claims defined as Covered Conduct.

14. The Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to MPU, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which MPU was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

15. If, within ninety-one (91) days of the Effective Date of this Agreement or of any payment made hereunder, MPU commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of MPU 's debts, or seeking to adjudicate MPU as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for MPU or for all or any substantial part of MPU assets, MPU agrees as follows:

(a). MPU's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and MPU will not argue or otherwise take the position in any such case, proceeding, or action that: (1) MPU's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (2) MPU was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (3) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to MPU.

(b). If MPU 's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against MPU for the claims that would otherwise be

covered by the releases provided in Paragraphs 2 and 3, above. MPU agrees that (1) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude MPU from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that MPU will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (2) that MPU will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States within ninety (90) calendar days of written notification to MPU that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on May 13, 2005; and (3) the United States has a valid claim against MPU in the amount of 5.1 Million Dollars, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c). MPU acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance

of this Agreement.

17. MPU represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. John Ward personally agrees to be jointly responsible for and guarantees the payment of the Settlement Amount at the times specified in this Settlement Agreement.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Middle District of Florida, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

20. This Agreement, including the CIA, constitutes the complete agreement between the Parties. This Agreement may not be amended unless by written consent of the Parties, except that only MPU and OIG-HHS must agree in writing to modification of the CIA.

21. The individuals signing this Agreement on behalf of MPU represent and warrant that they are authorized by MPU to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

23. This Agreement is binding on MPU's successors, transferees, heirs, and assigns.

24. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date").

THE UNITED STATES OF AMERICA

Paul I. Perez, United States Attorney

DATED: _____

BY: _____

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Assistant United States Attorney
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DATED: _____

BY: _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

MPU - DEFENDANT

DATED: _____

BY: _____

JOHN WARD
Personally and as Chief Executive
Officer and Managing Partner
of Mobility Products Unlimited, LLC
2400 S. Ridgewood Avenue, Suite 48
South Daytona, FL 32119

DATED: _____

BY: _____

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